

1999

State of Utah vs. Jeremiah Maul : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jan Graham; Utah Attorney General; Attorney for Appellee.

Randy S. Kester; Young, Kester and Petro; Margaret P. Lindsay; Aldrich, Nelson, Weight and Esplin; Attorneys for Appellant.

Recommended Citation

Reply Brief, *Utah v. Maul*, No. 990195 (Utah Court of Appeals, 1999).
https://digitalcommons.law.byu.edu/byu_ca2/2071

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
F U

KET NO. 990195-CA

Defendant/Appellant.

Priority No. 2

COURT OF APPEALS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENT	1
POINT I MAUL’S CLAIM OF JUROR BIAS WAS PROPERLY PRESERVED IN THE TRIAL COURT	1
POINT II THE TRIAL COURT ERRED IN REFUSING TO ARREST JUDGMENT AND GRANT MAUL A NEW TRIAL ON GROUNDS OF JUROR BIAS	2
CONCLUSION AND PRECISE RELIEF SOUGHT	8

TABLE OF AUTHORITIES

Statutory and Constitutional Provisions

Utah Rules of Criminal Procedure, Rule 18(e)(14)	6
Utah Rules of Criminal Procedure, Rule 18(e)(4)	5, 6

Cases Cited

<i>McDonough Power Equipment Inc. v. Greenwood</i> , 464 U.S. 548, 104 S.Ct. 845 (1984), 7	
<i>State v. Pierce</i> , 788 P.2d 352 (N.M. 1990).	6
<i>State v. Thomas</i> , 830 P.2d 243 (Utah 1992)	3, 6, 7

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

JEREMIAH MAUL,

Defendant/Appellant.

:
:
:
:
:
:
:
:
:
:
:
:
:

Case No. 990195-CA

Priority No. 2

REPLY BRIEF OF APPELLANT

ARGUMENT

POINT I

**MAUL’S CLAIM OF JUROR BIAS WAS
PROPERLY PRESERVED IN THE TRIAL COURT**

The State asserts that this Court should not reach Maul’s claim of juror bias because it was not properly preserved below because “defendant neither objected to the trial court’s conduct of jury voir dire nor availed himself of the opportunity to ask the venirepeople any additional questions concerning their knowledge of trial witnesses” (Br. of Appellee at 15). However, the State’s argument fails to consider that Juror Christensen failed to disclose *any* relationship between herself and witnesses Clay Nielsen, Angela Goode and Mary Goode. If Christensen had disclosed these relationships

then Maul could have asked her additional questions concerning the nature of these relationships during jury voir dire. But because she did not disclose the relationships Maul had no such opportunity to question her because he simply did not know of the relationships at the time. Accordingly, when Maul learned of the relationships he filed a Motion for a New Trial which was heard and ruled on by the trial court. Therefore, Maul asserts that the issue of juror bias is properly before this Court.

POINT II

THE TRIAL COURT ERRED IN REFUSING TO ARREST JUDGMENT AND GRANT MAUL A NEW TRIAL ON GROUNDS OF JUROR BIAS

The State asserts that this Court should not reach Maul's claim because he failed to marshal the evidence (Br. of Appellee at 17-18). However, Maul asserts that he did marshal all the evidence in his Statement of the Case (Br. of Appellant at 3-5) and then argued the insufficiency of the trial court's findings--and the prejudice he suffered because of Juror Christensen's failure to disclose--in his principal argument (Br. of Appellant at 15-19). Accordingly, this Court should reach Maul's claim.

To obtain a new trial based upon nondisclosure by a juror during voir dire, Maul must establish: One, that the juror "failed to answer honestly a material question on voir dire," and two, that a "correct response would have provided a valid basis for a challenge for cause" or at least allowed the exercise of a peremptory challenge against

her. *State v. Thomas*, 830 P.2d 243, 245 (Utah 1992) (quoting *McDonough Power Equipment Inc. v. Greenwood*, 464 U.S. 548, 556, 104 S.Ct. 845, 850 (1984)).

The State asserts that Maul has not established the first prong of the *McDonough* test and that this Court should affirm the trial court's ruling because the evidence "clearly supports the trial court's finding that Juror Christensen's relationships with Mary Goode and Angela Goode were both "casual" and "minimal" and therefore, Christensen did not fail to answer honestly a material question on voir dire (Br. of Appellee at 18, 21-22). While Juror Christensen may have described her relationship with Mary and Angela Goode as "casual", Maul asserts that these relationships were in fact sufficient to require disclosure by Christensen when she was asked to disclose during jury voir dire "any relationship or acquaintance [she] had with the witnesses that was something other than the casual acquaintance acquired by people living in small towns" (R. 197).

Christensen testified that she worked with Mary Goode as a maid for two months in 1993 at the Super-8 Motel (R. 244 at 9,11). Christensen also testified that the two of them would use the same maid cart and talk about work (R. 244 at 11). On the other hand, Mary Goode's affidavit establishes that in 1996 or 1997, Christensen was employed, under her supervision, as a maid at the motel and that Christensen was fired because her work under Goode's supervision was unsatisfactory; and that Goode believes that Christensen's termination created feelings of animosity towards her which would have tainted her impartiality as a juror (R. 169-70). Mary Goode's affidavit is supported by the testimony of Angela Goode who also worked as a maid at the Super-8 for a period

of time and was supervised by her mother who works as the housekeeper at the motel whose responsibility is to check that the maids have correctly cleaned and made-up the rooms (R. 244 at 18).

Maul asserts that even relying on Christensen's testimony alone, being employed at the same place and working side-by-side (often sharing the same maid cart) even for two months creates a relationship that is more than simply "the casual acquaintance acquired by people living in small towns." As such, Christensen's relationship with Mary Goode--particularly in light of Goode's testimony that Christensen was terminated for unsatisfactory job performance based on her evaluation and recommendation--should have been disclosed and the trial court's finding that it was merely "casual" is clearly erroneous.

Christensen also testified that she has known Angela Goode for five years (R. 244 at 13). Christensen testified that she had been to one social outing with Angela Goode (R. 244 at 13). Christensen testified that Angela Goode had never been to her house nor was she aware of any rumors concerning an improper relationship between her husband and Goode (R. 244 at 13). Angela Goode, on the other hand, testified that in addition to the social occasion testified to by Christensen, she has been to Christensen's house on 3-4 other social occasions where they talked and drank (R. 244 at 21). In addition, Goode testified that she was informed by the wife of Christensen's husband's best-friend of an accusation that she and Christensen's husband were having an affair (R. 244 at 24-26). While Christensen's relationship with Angela Goode is less substantial than her

relationship with Mary Goode, her feelings towards Mary would necessarily impact on her ability to impartially judge Angela's testimony.

The State also asserts that even if Christensen failed to honestly disclose her relationships with Mary and Angela Goode, the very question posed by the trial court regarding any relationship between jurors and witnesses was not "material" under *McDonough* because it was only relevance was to provide Maul with information with which to exercise a peremptory challenge (Br. of Appellee at 22 n.8). However, Rule 18(e)(4) of the Utah Rules of Criminal Procedure clearly establishes that any relationship between a prospective juror and a witness which would "suggest to reasonable minds that the prospective juror would be unable or unwilling to return a verdict which would be free from favoritism" is subject to a challenge for cause. Clearly the trial court's question to the prospective jurors concerning any relationship beyond a mere casual acquaintance that they might have with the witnesses goes to the heart of the jurors' ability to hear the testimony of the witnesses and impartially decide the outcome of the trial. Accordingly, the trial court's question was clearly "material" and "germane to [Christensen's] capacity to sit as an impartial juror." *State v. Pierce*, 788 P.2d 352, 356 (N.M. 1990).

Second, Maul asserts that had Christensen honestly disclosed her relationship with Mary and Angela Goode, that disclosure would have given him grounds to challenge her for cause and it certainly would have allowed him to exercise a peremptory challenge against her. *Thomas*, 830 P.2d at 245. As cited above, any relationship between a prospective and juror which would suggest to reasonable minds that the prospective juror

would be unable or unwilling to be impartial is grounds under Rule 18(e)(4) for a challenge for cause. Rule 18(e)(14) of the Utah Rules of Criminal Procedure likewise allows for challenges for cause where a “state of mind exists on the part of the juror with reference to the cause, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging.”

In this case, Maul’s key alibi witnesses were Angela Goode, Mary Goode and Maul’s mother. The jury was clearly informed that Mary Goode was Angela’s mother. Maul asserts that Christensen’s employment relationship with Mary Goode--namely that they worked side-by-side (according to Christensen) and Goode was responsible for Christensen’s termination (according to Goode)--clearly would suggest to reasonable minds that Christensen would be unable to impartially judge Mary Goode’s testimony. Likewise, because of the familial relationship between Mary and Angela Goode--coupled with the possible discord between Angela and Christensen over Christensen’s husband--it would be similarly clear that Christensen would be unable to impartially listen to and judge the testimony of Angela Goode.

Christensen may have testified that her relationships between Mary and Angela Goode were only “casual” and that there was no discord or disharmony between them. However, as Justice Zimmerman recognized in *Thomas*, “after the fact, the jurors may state that they still could have judged the case impartially and the State may claim that any challenge for cause would have been denied even if the questions had been answered accurately”, however, “[h]indsight should have no place” in this analysis. 830 P.2d at


250. Maul asserts that he established a prima facie case for a motion to disqualify Christensen for cause and that is sufficient to satisfy the second prong of the *McDonough* test.

Moreover, Christensen's failure to disclose the relationship between herself and Maul's key alibi witnesses--and her potential bias against them because of an alleged relationship between her husband and Angela Goode and an sour employment relationship between herself and Mary Goode--prevented any investigation by the trial court and counsel into such an inference of bias and it prevented Maul from exercising a peremptory challenge to dismiss her from the panel. "Peremptory challenges are... an important part of choosing a jury." *Thomas*, 830 P.2d at 249 (concurring opinion of J. Stewart) (citations omitted). Had Christensen honestly responded to the trial court's question it would have "provided a fair and strong basis for removing" her from the panel. *Id.* at 250. Maul asserts that "the question in this case [was] of such a nature that the incorrect answer [by Christensen] provides a valid basis under the circumstances for requiring a new trial." *Id.*

CONCLUSION AND PRECISE RELIEF SOUGHT

Maul asks that this Court reverse his convictions on grounds that the trial court erred in failing to arrest judgment and grant him a new trial on grounds of juror bias.

RESPECTFULLY SUBMITTED this 15 day of December, 1999.


MARGARET P. LINDSAY
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that I delivered two (2) true and correct copies of the foregoing
Brief to the Utah Attorney General, Appeals Division, 160 E. 300 South, 6th Floor, P.O.
Box 140854, Salt Lake City, Utah 84114 this 5 day of December, 1999.

